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US EPA RECORDS CENTER REGION 5



WRITER'S DIRECT NUMBER:

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669390:mab/579253v1

April 13, 2001

APR 19 2001

Ms. Deena Sheppard-Johnson, SR-6J
U.S. Environmental Protection Agency
Remedial Enforcement Support Section
77 West Jackson Blvd.
Chicago, IL 60604

Re: Response to Request for Information - Chemical Recovery Systems Site
in Elyria, Ohio

Dear Ms. Sheppard-Johnson:

This letter serves as the response of the Quikut division of The Scott Fetzer Company ("Quikut") to the March 2, 2001 Request for Information ("Request") regarding the Chemical Recovery Systems Site in Elyria, Ohio ("Site") addressed to Quikut. Per my telephone conversation with Thomas Nash last week, U.S. EPA agreed that The Scott Fetzer Company could have until today to mail its response. Nothing in Quikut's response to this Request shall constitute an admission of liability for the Site, and Quikut reserves its right to contest any allegations made against Quikut with regard to this Site by any person or entity. By responding to this request, Quikut does not intend to waive any applicable privileges, including, but not limited to, the attorney-client privilege and the attorney work product doctrine.

Quikut has several objections to the Request. First, no relevant time period is defined for the Request. However, based upon the attached Site History, Quikut understands the relevant time period to be 1960 through 1981. Quikut will make every effort to respond with respect to the relevant time period for which it has knowledge, but undertakes only to respond to the Request for the time period covered by its records and/or for the time period for which any persons with knowledge regarding the Site recall any information. To the extent that any documents have been disposed of in accordance with normal business practices and/or document retention policies prior to the receipt of the Request, Instruction No. 10 imposes an undue burden on Quikut if persons with knowledge do not recall the information requested.

Quikut objects to Instruction No. 8 and Definition No. 10 of "you," "yours," and "Respondent" as being unreasonable, unduly burdensome and beyond U.S. EPA's statutory authority to the extent they require Quikut to respond on behalf of other persons or parties not

Ms. Deena Sheppard-Johnson, SR-6J

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subject to Quikut's current control. Quikut can provide only that information currently in its own possession, and makes no response on behalf of any other person or entity.

Quikut objects to Instruction No. 11 as unreasonable, unduly burdensome and beyond U.S. EPA's statutory authority to the extent it purports to require Quikut to produce documents that would be protected from disclosure by the attorney-client privilege, attorney work product doctrine or other applicable privilege.

Quikut also objects to Definition No. 7 of "identify" to the extent it asks for home addresses and telephone numbers of Quikut's employees identified in response to this Request. All contact with Quikut's employees should be directed to Quikut's undersigned counsel. Quikut objects to Definition No. 9 of "identify" as being unreasonable and unduly burdensome to the extent it requires Quikut to recharacterize information contained on the face of documents provided.

It should be noted that U.S. EPA has not yet provided Quikut with any evidence allegedly linking Quikut with the Site. If U.S. EPA subsequently provides Quikut with such evidence, Quikut may be enabled to conduct a more targeted investigation to determine if any connection with the Site exists.

Notwithstanding and without waiving the above objections, Quikut submits the following responses to the Request. If you have any questions regarding the responses to the Request, please contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas A. Hamilton", with a stylized, flowing script.

Thomas A. Hamilton
Counsel for the Quikut division of
The Scott Fetzer Company

cc: Patricia M. Scanlon, Esq.
Stephen Q. Giblin, Esq.

RESPONSES TO REQUEST FOR INFORMATION

- 1. Identify all persons consulted in the preparation of the answers to these questions.**

Nathan Howard
Nick Gerner

- 2. Identify all documents consulted, examined, or referred to in the preparation of the answers to these questions and provide copies of all such documents.**

Quikut objects to Request No. 2 on the grounds that it is overly broad and unduly burdensome to the extent it requires Quikut to identify and provide copies of documents which are not responsive to specific questions regarding the Site. Accordingly, Quikut has only provided copies of documents which are responsive to specific questions in the Request.

- 3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any question or who may be able to provide additional responsive documents, identify such persons.**

Quikut is not aware of other persons who may have knowledge or responsive documents.

- 4. List the EPA Identification Numbers of the Respondent.**

Since it is not a generator of hazardous wastes, Quikut does not have a U.S. EPA Identification Number.

- 5. Identify the acts or omissions of any person, other than your employees, contractors, or agents, that may have caused the release or threat of release of hazardous substances, pollutants, or contaminants and damages resulting therefrom at the CRS Site.**

Quikut objects to Request No. 5 on the grounds that it requests information not in Quikut's current possession or control. Without waiving any objection, Quikut states that after conducting a reasonable inquiry, it has been unable to obtain information responsive to this question.

- 6. Identify all persons including respondent's employees, who have knowledge or information about the generation, use, treatment, storage, disposal, or other handling of material at or transportation of materials to the Site**

(operating as Obitts Chemical Company or Chemical Recovery Systems, Inc., at 142 Locust Street, Elyria, Ohio).

Quikut objects to Request No. 6 on the grounds that it requests information not in Quikut's current possession or control. Without waiving any objection, Quikut states that after conducting a reasonable inquiry, it has been unable to obtain information responsive to this question.

7. Describe all arrangements that Respondent may have or may have had with each of the following companies and persons:

- a) Obitts Chemical Company
- b) Russell Obitts
- c) Chemical Recovery Systems, Inc.
- d) Peter Shagena
- e) James Freeman
- f) James "Jim" Jackson
- g) Donald Matthews
- h) Bob Spears
- i) Bill Bromley
- j) Carol Oliver
- k) Nolwood Chemical Company, Inc.
- l) Art McWood
- m) Chuck Nolton
- n) Michigan Recovery System, Inc.
- o) Chemical Recovery Systems of Michigan

After conducting a reasonable inquiry, Quikut has not found any evidence of arrangements with the companies and persons listed in this question.

8. Set forth the dates during which the Respondent engaged in any of the following activities:

- a) generation of hazardous materials which were sent to the CRS Site;
- b) transportation of any materials to the CRS Site.

After conducting a reasonable inquiry, Quikut has not found any evidence that it transported or generated any hazardous substances which were transported to the Site.

9. Identify all persons, including yourself, who may have arranged for disposal or treatment, or arranged for transportation for disposal or treatment, of materials, including, but not limited to, hazardous substances, at the CRS Site. In addition, identify the following:

- a) The persons with whom you or such other persons made such arrangements;
- b) Every date on which such arrangements took place;

- c) For each transaction, the nature of the material or hazardous substance, including the chemical content, characteristics, physical state (e.g., solid, liquid), and the process for which the substance was used for the process which generated the substance;
- d) The owner of the materials or hazardous substances so accepted or transported;
- e) The quantity of the materials or hazardous substances involved (weight or volume) in each transaction and the total quantity for all transactions;
- f) All tests, analyses, and analytical results concerning the materials;
- g) The person(s) who selected the CRS Site as the place to which the materials or hazardous substances were to be transported;
- h) The amount paid in connection with each transaction, the method of payment, and the identity of the person from whom payment was received;
- i) Where the person identified in g., above, intended to have such hazardous substances or materials transported and all evidence of this intent;
- j) Whether the materials or hazardous substances involved in each transaction were transshipped through, or were stored or held at, any intermediate site prior to final treatment or disposal;
- k) What was actually done to the materials or hazardous substances once they were brought to the CRS Site;
- l) The final disposition of each of the materials or hazardous substances involved in such transactions;
- m) The measures taken by you to determine the actual methods, means, and site of treatment or disposal of the material and hazardous substance involved in each transaction;
- n) The type and number of containers in which the materials or hazardous substances were contained when they were accepted for transport, and subsequently until they were deposited at the CRS Site, and all markings on such containers;
- o) The price paid for (i) transport, (ii) disposal, or (iii) both of each material and hazardous substance;
- p) All documents containing information responsive to a - o above, or in lieu of identification of all relevant documents, provide copies of all such documents;
- q) All persons with knowledge, information, documents responsive to a - p above.

Quikut objects to Request No. 9 on the grounds that it requests information not in Quikut's current possession or control. Without waiving any objection, Quikut states that after conducting a reasonable inquiry, it has been unable to obtain information responsive to this question.

10. Identify all liability insurance policies held by Respondent from 1960 to the present. In identifying such policies, state the name and address of each insurer and of the insured, the amount of coverage under each policy, the commencement and expiration dates for each policy, whether or not the policy contains a "pollution exclusion" clause, and whether the policy covers or

excludes sudden, nonsudden, or both types of accidents. In lieu of providing this information, you may submit complete copies of all relevant insurance policies.

Quikut objects to Request 10 on the grounds that it is overly broad and unduly burdensome, particularly where, as here, Quikut has not advanced an inability to pay argument. Without waiving any objection, Quikut states that it has not, at this time, identified any insurance policies that may provide coverage for this potential liability.

11. Provide copies of all income tax returns, including all supporting schedules, sent to the Federal Internal Revenue Service in the last five years.

Quikut objects to Request 11 on the grounds that it is overly broad and unduly burdensome, particularly where, as here, Quikut has not advanced an inability to pay argument. If Quikut asserts an inability to pay defense in the future, Quikut will provide relevant financial information. Please contact Quikut if U.S. EPA requires this information in the absence of the assertion of an inability to pay defense.

12. If Respondent is a Corporation, respond to the following requests:

- a) **Provide a copy of the Articles of Incorporation and By-Laws of the Respondent;**
- b) **Provide Respondent's financial statements for the past five fiscal years, including, but not limited to, those filed with the Internal Revenue Service and Securities and Exchange Commission;**
- c) **Identify all of Respondent's current assets and liabilities and the person(s) who currently own(s) or is (are) responsible for such assets and liabilities;**
- d) **Identify the Parent Corporation and all Subsidiaries of the Respondent.**

a) Quikut is not a corporation, but rather an unincorporated division of The Scott Fetzer Company. Articles of Incorporation and By-laws of The Scott Fetzer Company are attached as Exhibit A.

- b) See response to Request 11.
- c) See response to Request 11.
- d) See response to Request 12(a).

13. If Respondent is a Partnership, respond to the following Requests:

- a) **Provide copies of the Partnership Agreement;**
- b) **Provide Respondent's financial statements for the past five fiscal years, including, but not limited to, those filed with the Internal Revenue Service and Securities and Exchange Commission;**
- c) **Identify all of Respondent's current assets and liabilities and the person(s) who currently own(s) or is (are) responsible for such assets and liabilities.**
- d) **Identify all subsidiaries of the Respondent.**

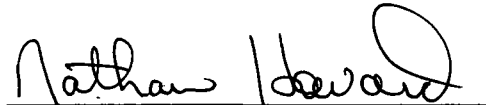
Not applicable.

14. If Respondent is a Trust, respond to the following requests:

- a) Provide all relevant agreements and documents to support this claim;**
- b) Provide Respondent's financial statements for the past five fiscal years, including, but not limited to, those filed with the Internal Revenue Service and Securities and Exchange Commission;**
- c) Identify all of Respondent's current assets and liabilities and the person(s) who currently own(s) or is (are) responsible for such assets and liabilities.**

Not applicable.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.



Nathan Howard

Vice President and General Manager

DATE:

4-10-01

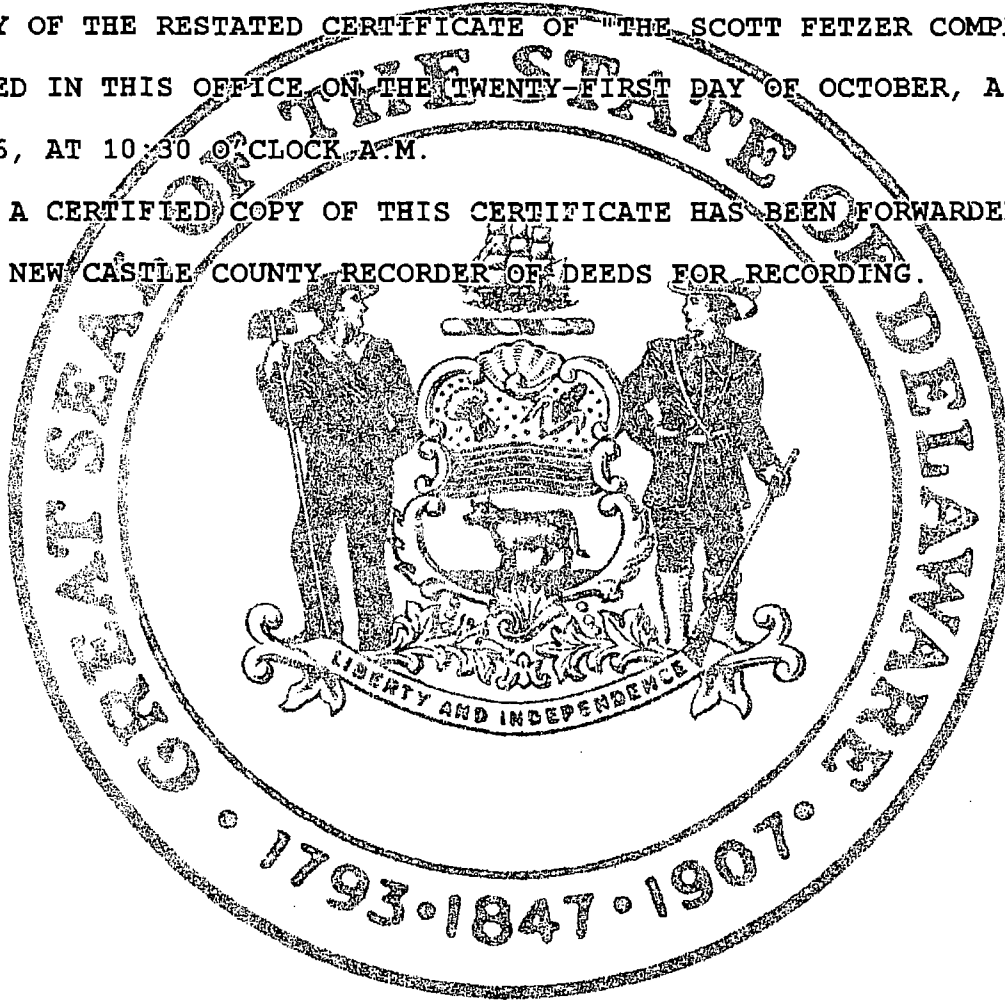


State of Delaware
Office of the Secretary of State

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "THE SCOTT FETZER COMPANY", FILED IN THIS OFFICE ON THE TWENTY-FIRST DAY OF OCTOBER, A.D. 1996, AT 10:30 O'CLOCK A.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.



Edward J. Freel

Edward J. Freel, Secretary of State

2079514 8100

960306376

AUTHENTICATION: 8157535

DATE: 10-23-96

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
THE SCOTT FETZER COMPANY

The Scott Fetzer Company, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is The Scott Fetzer Company and the name under which the corporation was originally incorporated is BHI Acquisition #1, Inc.

The date of filing of its original Certificate of Incorporation with the Secretary of State was December 26, 1985.

The date of filing the first amendment to the original Certificate of incorporation was November 18, 1986, amending the corporation name to The Scott Fetzer Company.

2. This Amended and Restated Certificate of Incorporation restates, integrates and further amends the original Certificate of Incorporation filed December 26, 1985, in its entirety.

3. The text of the Certificate of Incorporation, as previously amended, is further amended to read as herein set forth in full:

CERTIFICATE OF INCORPORATION
OF
THE SCOTT FETZER COMPANY

1. The name of the corporation is The Scott Fetzer Company.

2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

3. The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

4. The total number of shares of stock which the corporation is authorized to issue is one hundred (100) shares of common stock, having a par value of five cents (\$0.05) per share.

5. The business and affairs of the corporation shall be managed by the board of directors, and the directors need not be elected by ballot unless required by the by-laws of the corporation.

6. The corporation is to have perpetual existence.

7. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the board of directors is expressly authorized to adopt, amend or repeal the by-laws.

8. The corporation reserves the right to amend and repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware. All rights herein conferred are granted subject to this reservation.

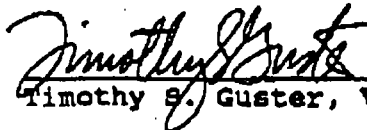
9. A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit.

10. This Amended and Restated Certificate of Incorporation was duly adopted by unanimous written consent of the stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, and further adopted by unanimous written consent of the Board of Directors.

IN WITNESS WHEREOF, The Scott Fetzer Company has caused this Certificate to be signed by Timothy S. Guster, its Vice President and attested by Judy A. Fox, its Assistant Secretary this 21st day of October, 1996.

THE SCOTT FETZER COMPANY

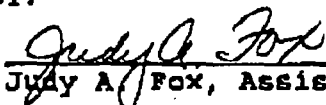
By:



Timothy S. Guster, Vice President

ATTEST:

By:



Judy A. Fox, Assistant Secretary

c:\wpwin\resolute\sfcert



State of DELAWARE

Office of SECRETARY OF STATE

I, Michael Harkins, Secretary of State of the State of Delaware,
to hereby certify that the Certificate of Incorporation of the "BHI ACQUISITION #1, INC.", was received and filed in this office the twenty-sixth day of December, A.D. 1985, at 9 o'clock A.M.

And I do hereby further certify that the said "BHI ACQUISITION #1, INC.", filed a Certificate of Amendment, changing its corporate title to "THE SCOTT FETZER COMPANY", on the eighteenth day of November, A.D. 1986, at 10 o'clock A.M.

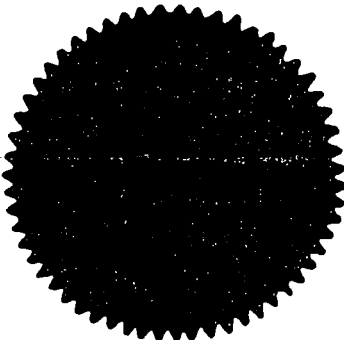
And I do hereby further certify that the aforesaid Certificates are the only Certificates on record of the aforesaid Corporation.

And I do hereby further certify that the aforesaid Corporation is duly incorporated under the laws of the State of Delaware and is in good standing and has a legal corporate existence not having been cancelled or dissolved so far as the records of this office show and is duly authorized to transact business.

And I do hereby further certify that the Annual Reports have been filed to date.

And I do hereby further certify that the Franchise Taxes have been paid to date.

In Testimony Whereof, *I have hereunto set my hand*
and official seal at Dover this sixth *day*
of January *in the year of our Lord*
one thousand nine hundred and eighty-seven.



Michael Harkins
Michael Harkins, Secretary of State

CONFORMED COPY OF
BY-LAWS
OF
BHI Acquisition #1, INC.
Now Known As
The Scott Fetzer Company

a Delaware Corporation)

As Amended

ARTICLE I

OFFICES

Section 2. PRINCIPAL OFFICES. The board of directors shall fix the location of the principal executive office of the corporation at any place within or outside the State of Delaware.

Section 2. OTHER OFFICES. The board of directors may at any time establish branch or subordinate offices at any place or places where the corporation is qualified to do business.

ARTICLE II

MEETINGS OF SHAREHOLDERS

Section 1. PLACE OF MEETINGS. Meetings of shareholders shall be held at any place within or outside the State of Delaware designated by the board of directors. In the absence of any such designation, shareholders' meetings shall be held at the principal executive office of the corporation.

Section 2. ANNUAL MEETINGS. The annual meeting of shareholders shall be held on such date and time designated by the board of directors. At each annual meeting directors shall be elected by a majority vote, and any other proper business may be transacted.

Section 3. SPECIAL MEETING. A special meeting of the shareholders may be called at any time by a majority of the board of directors, or by the chairman of the board, or by one or more shareholders holding shares in the aggregate entitled to cast not less than 20% of the votes at that meeting.

If a special meeting is called by any person or persons other than the board of directors, the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by a telegraphic or other facsimile transmission to the chairman of the board, the president, any vice president, or the secretary of the corporation. The officer receiving the request shall cause notice to be promptly given to the

shareholders entitled to vote in accordance with the provisions of Sections 4 and 5 of this Article II, that a meeting will be held at the time requested by the person or persons calling the meeting, which shall be not less than ten (10) nor more than sixty (60) days after notice is sent. If the notice is not given within twenty (20) days after receipt of the request, the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph of this Section 3 shall be construed as limiting, fixing or affecting the time when a meeting of shareholders called by action of the board of directors may be held.

Section 4. NOTICE OF SHAREHOLDERS' MEETING. All notices of meetings of shareholders shall be sent or otherwise given in accordance with Section 5 of this Article II not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and (i) in the case of a special meeting, the general nature of the business to be transacted, or (ii) in the case of the annual meeting, those matters which the board of directors, at the time of giving the notice, intends to present for action by the shareholders. The notice of any meeting at which directors are to be elected shall include the name of any nominee or nominees whom, at the time of the notice, management intends to present for election.

If action is proposed to be taken at any meeting for approval of (i) a contract or transaction in which a director or officer has a direct or indirect financial interest, (ii) an amendment of the articles of incorporation, (iii) a reorganization of the corporation, (iv) a voluntary dissolution of the corporation, or (v) a distribution in dissolution other than in accordance with the rights of outstanding preferred shares, the notice shall also state the general nature of that proposal.

Section 5. MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE. Notice of any meeting of shareholders shall be given either personally or by first-class mail or telegraphic or other written communication, charges, prepaid, addressed to the shareholder at the address of that shareholder appearing on the books of the corporation or given by the shareholder to the corporation for the purpose of notice. If no such address appears on the corporation's books or is given, notice shall be deemed to have been given if sent to that shareholder by first-class mail or telegraphic or other written communication to the corporation's principal executive office, or if published at least once in a newspaper of general circulation in the county where that office is located. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by telegram or other means of written communication.

If any notice addressed to a shareholder at the address of that shareholder appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the shareholder at that address, all future notices or reports shall be deemed to have been duly given without further mailing and these shall be available to the shareholder on written demand of the shareholder at the principal executive office of the corporation for a period of one year from the date of the giving of the notice.

An affidavit of the mailing or other means of giving any notice of any shareholders' meeting shall be executed by the secretary, assistant secretary,

or any transfer agent of the corporation giving the notice, and shall be filed and maintained in the minute book of the corporation.

Section 6. QUORUM. The presence in person or by proxy of the holders of a majority of the shares entitled to vote at any meeting of shareholders shall constitute a quorum for the transaction of business. The shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

Section 7. ADJOURNED MEETING; NOTICE. Any shareholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the shares represented at the meeting, either in person or by proxy, but in the absence of a quorum, no other business may be transacted at that meeting, except as provided in Section 6 of this Article II.

When any meeting of shareholders, either annual or special, is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place are announced at a meeting at which the adjournment is taken, unless a new record date for the adjourned meeting is fixed, or unless the adjournment is for more than forty-five (45) days from the date set for the original meeting, in which case the board of directors shall set a new record date. Notice of any such adjourned meeting shall be given to each shareholder of record entitled to vote at the adjourned meeting in accordance with the provisions of Sections 4 and 5 of this Article II. At any adjourned meeting the corporation may transact any business which might have been transacted at the original meeting.

Section 8. VOTING. The shareholders entitled to vote at any meeting of shareholders shall be determined in accordance with the provisions of Section 11 of this Article II, subject to applicable provisions of law relating to voting shares held by a fiduciary, in the name of a corporation, or in joint ownership. The shareholders' vote may be by voice vote or by ballot; provided, however, that any election for directors must be by ballot if demanded by any shareholder before the voting has begun. On any matter other than elections of directors, any shareholder may vote part of the shares in favor of the proposal, but, if the shareholder fails to specify the number of shares which the shareholder is voting affirmatively, it will be conclusively presumed that the shareholder's approving vote is with respect to all shares that the shareholder is entitled to vote on any matter (other than the election of directors) shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by law or by the articles of incorporation.

At a shareholders' meeting at which directors are to be elected, no shareholder shall be entitled to cumulate votes (i.e., cast for any one or more candidates a number of votes greater than the number of the shareholder's shares) unless required by law.

Section 9. WAIVER OF NOTICE OR CONSENT BY ABSENT SHAREHOLDERS. The transactions of any meeting of shareholders, either annual or special, however

called and noticed, and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if either before or after the meeting, each person entitled to vote, who was not present in person or by proxy, signs a written waiver of notice or a consent to a holding of the meeting, or an approval of the minutes. The waiver of notice or consent need not specify either the business to be transacted or the purpose of any annual or special meeting of shareholders, except that if action is taken or proposed to be taken for approval of any of those matters specified in the second paragraph of Section 4 of this Article II, the waiver of notice or consent shall state the general nature of the proposal. All such waivers, consent or approval shall be filed with the corporate records or made a part of the minutes of the meeting.

Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting if that objection is expressly made at the meeting.

Section 10. SHAREHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Any action which may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding shares having not less than the minimum of votes that would be necessary to authorize or take that action at a meeting at which all shares entitled to vote on that action were present and voted. In the case of election of directors, such a consent shall be effective only if signed by the holders of all outstanding shares entitled to vote for the election of directors; provided, however, that a director may be elected at any time to fill a vacancy on the board of directors that has not been filled by the directors, by the written consent of the holders of a majority of the outstanding shares entitled to vote for the election of directors. All such consents shall be filed with the secretary of the corporation and shall be maintained in the corporate records. Any shareholder giving a written consent, or the shareholder's proxy holders, or a transferee of the shares of a personal representative of the shareholder or their respective proxy holders, may revoke the consent by a writing received by the secretary of the corporation before written consents of the number of shares required to authorize the proposed action have been filed with the secretary.

If the consents of all shareholders entitled to vote have not been solicited in writing, and if the unanimous written consent of all such shareholders shall not have been received, the secretary shall give prompt notice of the corporate action approved by the shareholders without a meeting. This notice shall be given in the manner specified in Section 5 of this Article II. In the case of approval of (i) contracts or transactions in which a director or officer has a direct or indirect financial interest, (ii) indemnification of agents of the corporation, (iii) a reorganization of the corporation, or (iv) a distribution in dissolution other than in accordance with the rights of outstanding preferred shares, the notice shall be given at least ten (10) days before the consummation of any action authorized by that approval.

Section 11. RECORD DATE FOR SHAREHOLDER NOTICE, VOTING, AND GIVING CONSENTS. For purposes of determining the shareholders entitled to notice of any meeting or to vote or entitled to give consent to corporate action without a meeting, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten (10) days before the date of any such meeting nor more than sixty (60) days before any such action without a meeting, and in this event only shareholders of record on the date so fixed are entitled to notice and to vote or to give consents, as the case maybe, notwithstanding any transfer of any shares on the books of the corporation after the record date, except as otherwise provided in the Delaware General Corporation Law.

If the board of directors does not so fix a record date:

(a) The record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(b) The record date for determining shareholders entitled to give consent to corporate action in writing without a meeting, (i) when no prior action by the board has been taken, shall be the day on which the first written consent is given, or (ii) when prior action of the board has been taken, shall be at the close of business on the day on which the board adopts the resolution relating to that action.

Section 12. PROXIES. Every person entitled to vote for directors or on any other matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the secretary of the corporation. A proxy shall be deemed signed if the shareholder's name is placed on the proxy whether by manual signature, typewriting, telegraphic transmission, or otherwise by the shareholder or the shareholder's attorney in fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it, before the vote pursuant to that proxy, by a writing delivered to the corporation stating that the proxy is revoked, or by a subsequent proxy executed by, or attendance at the meeting and voting in person by, the person executing the proxy; or (ii) written notice of the death or incapacity of the maker of that proxy is received by the corporation before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy.

Section 13. INSPECTORS OF ELECTION. Before any meeting of shareholders, the board of directors may appoint any persons other than nominees for office to act as inspectors of election at the meeting or its adjournment. If no inspectors of election are so appointed, the chairman of the meeting may, and on the request of any shareholder or a shareholder's proxy shall, appoint inspectors of election at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting on the request of one or more shareholders or proxies the holders of a majority of shares or their respective proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If any person

appointed as inspector fails to appear or fails or refuses to act, the chairman of the meeting may, and upon the request of any shareholder or a shareholder's proxy shall, appoint a person to fill that vacancy.

These inspectors shall:

- (a) Determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;
- (b) Receive votes, ballots, or consents;
- (c) Hear and determine all challenges and questions in any way arising in connection with the right to vote;
- (d) Count and tabulate all votes or consents;
- (e) Determine when the polls shall close;
- (f) Determine the result; and
- (g) Do any other acts that may be proper to conduct the election or vote with fairness to all shareholders.

ARTICLE III

DIRECTORS

Section 1. POWERS. Subject to the provisions of the Delaware General Corporation Law and any limitations in the articles of incorporation and these by-laws relating to action required to be approved by the shareholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

Section 2. NUMBER OF DIRECTORS. The authorized number of directors shall be at least one (1) and no more than three (3), the exact number to be fixed from time to time by resolution adopted by majority of directors.

Section 3. ELECTION AND TERM OF OFFICE OF DIRECTORS. The initial directors shall be elected by the incorporators. Thereafter, directors shall be elected at each annual meeting of the shareholders or at a special meeting called for that purpose and shall hold office until the next annual meeting. Each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

Section 4. VACANCIES. Vacancies in the board of directors may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, except that a vacancy created by the removal of a director by the vote or written consent of the shareholders or by court order may be filled only by the vote of a majority of the shares entitled to vote represented at a duly held meeting at which a quorum is present, or by the

written consent of holders of a majority of the outstanding shares entitled to vote. Each director so elected shall hold office until the next annual meeting of the shareholders and until a successor has been elected and qualified.

A vacancy or vacancies in the board of directors shall be deemed to exist in the event of the death, resignation or removal of any director, or if the board of directors by resolution declares vacant the office of a director who has been declared of unsound mind an order of court, or convicted of a felony, or if the authorized number of directors is increased or if the shareholders fail, at any meeting of the shareholders at which any director or directors are elected, to elect the number of directors to be voted for at that meeting.

The shareholders may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors, but any such election by written consent shall require the consent of a majority of the outstanding shares entitled to vote.

Any director may resign effective on giving written notice to the chairman of the board, the president, the secretary, or the board of directors, unless the notice specifies a later time for that resignation to become effective. If the resignation of a director is effective at a future time, the board of directors may elect a successor to take office when the resignation becomes effective.

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

Section 5. PLACE OF MEETINGS AND MEETINGS BY TELEPHONE. Regular meetings of the board of directors may be held at any place within or outside of the State of Delaware that has been designated from time to time by resolution of the board. In the absence of such a designation, regular meetings shall be held at the principal executive office of the corporation. Special meetings of the board of directors shall be held at any place within or outside the State of Delaware that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, at the principal executive office of the corporation. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all directors participating in the meeting can hear one another, and all such directors shall be deemed to be present in person at the meeting.

Section 6. ANNUAL MEETING. Immediately following each annual meeting of shareholders, the board of directors shall hold a regular meeting for the purpose of organization, any desired election of officers, and the transaction of other business. Notice of this meeting shall not be required.

Section 7. OTHER REGULAR MEETINGS. Other regular meetings of the board of directors shall be held without call at such time as shall from time to time be fixed by the board of directors. Such regular meetings may be held without notice.

Section 8. SPECIAL MEETINGS. Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman

of the board or the president or any vice president or the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail or telegram, charges prepaid, addressed to each director at the director's address as it is shown on the records of the corporation. In case the notice is mailed, it shall be deposited in the United States Mail a least four (4) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or telegram, it shall be delivered personally or by telephone or to the telegraph company at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose of the meeting nor the place if the meeting is to be held at the principal executive office of the corporation.

Section 9. QUORUM. The presence of not less than majority of the directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the board of directors, subject to the provisions of applicable law as to approval of contracts or transactions in which a director has a direct or indirect material financial interest, as to appointment of committees, and as to indemnification of directors. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 10. WAIVER OF NOTICE. The transactions of any meeting of the board of directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting, before or at its commencement, the lack of notice to that director.

Section 11. ADJOURNMENT. A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 12. NOTICE OF ADJOURNMENT. Notice of the time and place of holding an adjourned meeting need not be given unless the meeting is adjourned for more than twenty-four hours, in which case notice of the time and place shall be given before the time of the adjourned meeting, in the manner specified in Section 8 of this Article III, to the directors who were not present at the time of the adjournment.

Section 13. ACTION WITHOUT MEETING. Any action required or permitted to be taken by the board of directors may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the board of directors. Such written consent or consents shall be filed with the minutes of the proceedings of the board.

Section 14. FEES AND COMPENSATION OF DIRECTORS. Directors and members of committees except any director who is simultaneously an employee of the company may receive such compensation, if any, for their services as director, and such reimbursement of the expenses, as may be fixed or determined by resolution of the board of directors. This Section 14 shall not be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation for those services.

ARTICLE IV

COMMITTEES

Section 1. COMMITTEES OF DIRECTORS. The board of directors may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees each consisting of one or more of the directors of the corporation, to serve at the pleasure of the board. The board may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any committee, to the extent provided in the resolution of the board, shall have all the authority of the board, except with respect to:

- (a) The approval of any action which is not permitted for a board committee, under the General Corporation Law of Delaware; or the approval of any action which under the General Corporation Law of Delaware also requires shareholders' approval or approval of the outstanding shares;
- (b) The filling of vacancies on the board of directors or in any committee;
- (c) The fixing of compensation of the directors for serving on the board or on any committee;
- (d) The amendment or repeal of by-laws or the adoption of new by-laws;
- (e) The amendment or repeal of any resolution of the board of directors which by its express terms is not so amendable or repealable;
- (f) any distribution to the shareholders of the corporation, except at a rate or in a periodic amount or within a price range determined by the board of directors; or

(g) The appointment of any other committees of the board of directors or the members of these committees.

Section 2. MEETINGS AND ACTION OF COMMITTEES. Meetings and action of committees shall be governed by and held and taken in accordance with, the provisions of Article III of these by-laws, Section 5 (place of meetings), 7 (regular meetings), 8 (special meetings and notice), 9 (quorum), 10 (waiver of notice), 11 (adjournment), 12 (notice of adjournment), and 13 (action without meeting), with such changes in the context of those by-laws as are necessary to substitute the committee and its members for the board of directors and its members, except that the time of regular meetings of the committees may be determined either by resolution of the board of directors or by resolution of the committee; special meetings of committees may also be called by resolution of the board of directors; and notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these by-laws.

ARTICLE V

OFFICERS

Section 1. OFFICERS. The officers of the corporation shall be a Chief Executive Officer, a President and Chief Operating Officer, one or more Vice Presidents, a Secretary, a Treasurer and may be one or more Group Presidents and/or one or more Group Vice Presidents. The corporation may also have, at the discretion of the Board of Directors, a Chairman of the Board, a Vice Chairman of the Board, one or more assistant secretaries, one or more assistant treasurers and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article V. Any number of offices may be held by the same person.

Section 2. ELECTION OF OFFICERS. The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article V, shall be chosen by the board of directors, and each shall serve at the pleasure of the board, subject to all rights, if any, of an officer under any contract of employment.

Section 3. SUBORDINATE OFFICERS. The board of directors may appoint, and may empower the president to appoint such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the by-laws or as the board of directors may from time to time determine.

Section 4. REMOVAL AND RESIGNATION OF OFFICERS. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the board of directors, at any regular or special meeting of the board, or except in case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

Section 5. VACANCIES IN OFFICES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these by-laws for regular appointments to that office.

Section 6. CHAIRMAN OF THE BOARD. The Chairman of the Board, if such an office be elected shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to him by the board of directors or prescribed by the by-laws.

Section 6A. CHIEF EXECUTIVE OFFICER. Subject to such supervisory powers, if any, as may be given by the board of directors to the Chairman of the Board, if there be such an officer, the Chief Executive Officer shall have general supervision, direction and control of all policies and practices affecting the business and the officers of the corporation. He shall preside at all meetings of the shareholders and in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board of Directors. In addition, he shall supervise and direct the President in the discharge of his duties. If there is no President, or in the absence of the President, the Chief Executive Officer shall, in addition, be the Chief Operating Officer of the corporation and shall have all of the powers and duties prescribed in Section 7 of this Article V.

Section 7. PRESIDENT. Subject to such supervisory powers, if any, as may be given by these by-laws or by the board of directors to the Chief Executive Officer, the President shall be the Chief Operating Officer of the corporation and shall have general supervision, direction, and control of all operations of the business and of all officers (except the Chief Executive Officer) of the corporation and its various operating units and divisions. He shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the board of directors, the Chief Executive Officer or the by-laws. In the absence or disability of the Chief Executive Officer, the President shall perform all the duties of the Chief Executive Officer.

Section 7A. GROUP PRESIDENT AND GROUP VICE PRESIDENT. Subject to such supervisory powers as have been given to the Chief Executive Officer and the President, the Group President or Group Vice President, if such officers are appointed and as the case may be, shall have such powers and authority as shall be designated by the President regarding the general supervision, direction and control of certain of the businesses and divisions of the corporation, all under the general supervision of the President and Chief Operating Officer. In the absence or disability of both the Chief Executive Officer and the President, the Group Presidents and next, Group Vice

Presidents, if any, in order of their rank as determined by their chronological appointment as an officer of the corporation, shall perform all the duties of the President, and, when so acting shall have all of the powers of, and be subject to all the restrictions upon, the President.

Section 8. VICE PRESIDENTS. The vice presidents shall have such powers and perform such duties as from time to time may be prescribed for them respectively by the Chief Executive Officer or by the President or by the by-laws of the corporation. In the absence or disability of the Chief Executive Officer, the Chief Operating Officer and, if any, the Group President(s) or Group Vice President(s), the Vice Presidents in order of their rank as determined by their chronological appointment as an officer of the corporation shall perform all the duties of the President and, when so acting, shall have all of the powers of, and be subject to all the restrictions upon, the President.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 1. AGENTS, PROCEEDINGS, AND EXPENSES. For the purpose of this Article, "agent" means any person who is or was a director, officer, employee, or other agent of this corporation, or is or was serving at the request of this corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative, or investigative, and "expenses" includes, without limitation, attorney's fees and any expenses of establishing a right to indemnification.

Section 2. INDEMNIFICATION. This corporation shall indemnify its agents to the maximum extent allowed by law as applicable at any point in time.

ARTICLE VII

RECORDS AND REPORTS

Section 1. MAINTENANCE AND INSPECTION OF SHARE REGISTER. The corporation shall keep at its principal executive office, or at the office of its transfer agent or registrar, if either be appointed and as determined by resolution of the board of directors, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of shares held by each shareholder.

A shareholder or shareholders of the corporation holding at least five percent (5%) in the aggregate of the outstanding voting shares of the corporation may (i) inspect and copy the records of shareholders' names and addresses and shareholdings during usual business hours on Five days prior

written demand on the corporation, and (ii) obtain from the transfer agent of the corporation, on written demand and on the tender of such transfer agents usual charges for such list a list of the shareholders' names and addresses, who are entitled to vote for the election of directors, and their shareholdings, as of the most recent record date for which that list has been compiled or as of a date specified by the shareholder after the date of demand. This list shall be made available to any such shareholder by transfer agent on or before the later of five (5) days after the demand is received or the date specified in the demand as the date as of which the list is to be compiled. The record of shareholders shall also be open to inspection on the written demand of any shareholder or holder of a voting trust certificate, at any time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder or as the holder of a voting trust certificate. Any inspection and copying under this Section 1 may be made in person or by an agent or attorney of the shareholder or holder of a voting trust certificate making the demand.

Section 2. MAINTENANCE AND INSPECTION OF BY-LAWS. The corporation shall keep at its principal executive office the original or a copy of the by-laws as amended to date, which shall be open to inspection by the shareholders at all reasonable times during office hours.

Section 3. INSPECTION BY DIRECTORS. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the corporation and each of its subsidiary corporations. This inspection by a director may be made in person or by an agent or attorney and the right of inspection includes the right to copy and make extracts of documents.

Section 4. FINANCIAL STATEMENTS. A copy of any annual financial statement and any income statement of the corporation for each quarterly period of each fiscal year, and any accompanying balance sheet of the corporation as of the end of each such period, that has been prepared by the corporation shall be kept on file in the principal executive office of the corporation for twelve (12) months and each such statement shall be exhibited at all reasonable times to any shareholder demanding an examination of any such statement or a copy shall be mailed to any such shareholder.

If a shareholder or shareholders holding at least five percent (5%) of the outstanding shares of any class of stock of the corporation makes a written request to the corporation for an income statement of the corporation for the three-month, six-month or nine-month period of the then current fiscal year ended more than thirty (30) days before the date of the request, and a balance sheet of the corporation as of the end of that period, the chief financial officer shall cause that statement to be prepared, if not already prepared, and shall deliver personally or mail that statement or statements to the person making the request within thirty (30) days after the receipt of the request. If the corporation has not sent to the shareholders its annual report for the last fiscal year, this report shall likewise be delivered or mailed to the shareholder or shareholders within thirty (30) days after the request.

The corporation shall also, on the written request of any shareholder, mail to the shareholder a copy of the last annual, semi-annual, or quarterly

income statement which it has prepared, and a balance sheet as of the end of that period.

The quarterly income statements and balance sheets referred to in this section shall be accompanied by the report, if any, of any independent accountants engaged by the corporation or the certificate of an authorized officer of the corporation that the financial statements were prepared without audit from the books and records of the corporation.

ARTICLE VIII

GENERAL CORPORATE MATTERS

Section 1. RECORD DATE FOR PURPOSES OTHER THAN NOTICE AND VOTING. For purposes of determining the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect of any other lawful action (other than action by shareholders by written consent without a meeting), the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days before any such action, and in that case only shareholders of record on the date so fixed are entitled to receive the dividend, distribution, or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date so fixed, except as otherwise provided in the Delaware General Corporation Law.

If the board of directors does not so fix a record date, the record date for determining shareholders for any such purpose shall be at the close of business on the date on which the board adopts the application resolution.

Section 2. CHECKS, DRAFTS, EVIDENCE OF INDEBTEDNESS. All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness, issued in the name of or payable to the corporation, shall be signed or endorsed by such person or persons and in such manner as from time to time, shall be determined by resolution of the board of directors.

Section 3. CORPORATE CONTRACTS AND INSTRUMENTS: HOW EXECUTED. The board of directors, except as otherwise provided in these by-laws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation, and this authority may be general or confined to specific instances; and, unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 4. CERTIFICATES FOR SHARES. A certificate or certificates for shares of the capital stock of the corporation shall be issued to each shareholder when any of these shares are fully paid, and the board of directors may authorize the issuance of certificates and/or shares as partly paid provided that these certificates shall state the amount of the consideration to be paid for them and the amount paid. All certificates shall be signed in the name of the corporation by the chairman of the board or vice chairman of the

board or the president or vice president and by the treasurer or an assistant treasurer or the secretary or any assistant secretary, certifying the number of shares and the class or series of shares owned by the shareholder. Any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed on a certificate shall have ceased to be that officer, transfer agent, or registrar before the certificate is issued, it may be issued by the corporation with the same effect as if that person were an officer, transfer agent, or registrar at the date of issue.

Section 5. LOST CERTIFICATES. Except as provided in this Section 5, no new certificates for shares shall be issued to replace an old certificate unless the latter is surrendered to the corporation and cancelled at the same time. The board of directors may, in case any share certificate or certificate for any other security is lost, stolen, or destroyed, authorize the issuance of a replacement certificate on such terms and conditions as the board may require, including provision for indemnification of the corporation secured by a bond or other adequate security sufficient to protect the corporation against any claim that may be made against it, including any expense or liability, on account of the alleged loss, theft, or destruction of the certificate or the issuance of the replacement certificate.

Section 6. REPRESENTATION OF SHARES OF OTHER CORPORATIONS. The chairman of the board, the president, or any vice president, or any other person authorized by resolution of the board of directors or by any of the foregoing designated officers, is authorized to vote on behalf of the corporation any and all shares of any other corporation or corporations, foreign or domestic, standing in the name of the corporation. The authority granted to these officers to vote or represent on behalf of the corporation any and all shares held by the corporation in any other corporation or corporations may be exercised by any of these officers in person or by any person authorized to do so by proxy duly executed by these officers.

Section 7. CONSTRUCTION AND DEFINITIONS. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these by-laws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular and the term "person" includes both a corporation and a natural person.

ARTICLE IX

AMENDMENTS

Section 1. AMENDMENT BY SHAREHOLDERS. New by-laws may be adopted or these by-laws may be amended or repealed by the vote or written consent of a majority of the outstanding shares entitled to vote; provided, however, that if the articles of incorporation of the corporation set forth the number of authorized directors of the corporation, the authorized number of directors may be changed only by an amendment of the articles of incorporation.

Section 2. AMENDMENT BY DIRECTORS. Subject to the rights of the shareholders as provided in Section 1 of this Article IX, by-laws, other than a

by-law or an amendment of a by-law changing the authorized number of directors, may be adopted, amended, or repealed by the board of directors.

